

ASSEMBLY BILL

No. 1084

Introduced by Assembly Member Adams

February 27, 2009

An act to amend Sections 66000, 66001, 66002, 66006, 66016, and 66018 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 1084, as introduced, Adams. Local planning: development projects: fees.

(1) The Mitigation Fee Act authorizes a local agency to charge a variety of fees, dedications, reservations, or other exactions in connection with the approval of a development project, as defined. A “fee” is defined to mean a monetary exaction other than a tax or special assessment, as specified, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. “Public facilities” is defined to include public improvements, public services, and community amenities.

This bill would revise the definition of “fee” to mean a charge or other exaction, including a dedication, reservation, set-aside, or contribution of real or personal property or services, including a monetary exaction other than a tax or special assessment, as specified, that is charged by a local agency, including a local agency that does not itself approve the development project, to the applicant in connection with the development project or as a condition of approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. “Public facilities” would be defined to include public improvements, public

services, community amenities, and measures intended to mitigate or alleviate the effects of the development project, whether or not owned or controlled by a public agency.

(2) The Mitigation Fee Act provides that in any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency is required to determine how there is reasonable relationship between the amount of the fee and the cost of public facility or portion of the public facility attributable to the development project on which the fee is imposed.

This bill would provide that in any action – whether ministerial, discretionary, adjudicatory, or legislative – establishing, extending, amending, increasing, or imposing a fee, the local agency would be required to determine, prior to imposing the fee, how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed. Fees would be authorized to be simultaneously adopted, imposed, or collected to finance more than one of the categories of facilities or improvements, as specified, provided that each category of facilities or improvements separately complies with specified conditions, and those fees would be prohibited to be commingled. If a request is made to revise or update fees, as specified, a local agency would be required to revise or update the fees in writing and provide substantial evidence in the record demonstrating that the new fees comply with specified provisions. A local agency would not be required to update the fees more frequently than every 12 months. Any costs incurred by a local agency to revise or update the fee would be allowed to be recovered as part of the fees. By adding to the duties of local officials, this bill would impose a state-mandated local program.

(3) The Mitigation Fee Act provides that a local agency that levies a fee subject to the act may adopt a capital improvement plan that indicates the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

This bill would require a local agency that levies a fee subject to the act to first adopt a capital improvement plan that would be required to identify the purpose or function of any public facilities for any fees that are to be imposed and that already is required to indicate the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees. The fees charged pursuant to the act would be authorized to include the costs reasonably necessary

to prepare and revise the capital improvement plan. By adding to the duties of local officials, this bill would impose a state-mandated local program.

(4) The Mitigation Fee Act requires that, at the time the local agency imposes a fee for public improvements on a specific development project, the local agency is required to identify the public improvement that the fee will be used to finance.

This bill instead would require that, at the time the local agency imposes a fee for public improvements on or in connection with a specific development project, the local agency identify the public improvement that the fee will be used to finance. A party against whom a fee is to be imposed would be required to have the opportunity for a hearing to appeal the fee, as specified. By adding to the duties of local officials, this bill would impose a state-mandated local program.

(5) The Mitigation Fee Act requires a local agency, prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, to hold at least one open and public meeting, as specified. At least 14 days prior to the meeting, the local agency is required to mail notice of the time and place of the meeting, as specified, to any interested party who files a written request with the local agency for mailed notice. At least 10 days prior to the meeting, the local agency is required to make available public data indicating the amount of cost, or estimated costs, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service.

This bill instead would require that at least 45 days prior to the first meeting, the local agency is required to mail notice of the time and place of the meeting, as specified, to any interested party who files a written request with the local agency for mailed notice. The local agency would be required to make available, at least 45 days prior to the first meeting, public data indicating the amount of cost, or estimated costs, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service.

(6) The Mitigation Fee Act requires a local agency, prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or approving an increase in an existing fee subject to the act, to hold a public hearing, as specified.

This bill would require notice of the time and place of the meeting, as specified, and a statement that specified data is available to be mailed at least 45 days prior to the first meeting to any interested party who

files a written request with the local agency for mailed notice of the meeting on new extended, amended, or increased fees. Any written request for mailed notices would be required to be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices would be required to be filed on or before April 1 of each year. The legislative body would be authorized to establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least 45 days prior to the first meeting, the local agency would be required to make available to the public the capital improvement plan and nexus study, or similar written report, and all documentation relating to the findings required by this act, as well as data indicating the amount of cost, or estimated cost, required to provide the public facilities, as defined, for which the fee is proposed to be enacted, extended, amended, or increased and the revenue sources anticipated to fund those public facilities, including General Fund revenues. The new or increased fee would be required to be effective no sooner than 60 days following the final action on the adoption or increase of the fee. By adding to the duties of local officials, this bill would impose a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66000 of the Government Code is
2 amended to read:
3 66000. As used in this chapter, the following terms have the
4 following meanings:
5 (a) "Development project" means any project undertaken for
6 the purpose of development. "Development project" includes a
7 project involving the issuance of a permit for construction or
8 reconstruction, but not a permit to operate.
9 (b) "Fee" means *a charge or other exaction, including a*
10 *dedication, reservation, set-aside, or contribution of real or*
11 *personal property or services, including a monetary exaction other*

than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis *or pursuant to a schedule or formula of general application*, that is charged by a local agency, *including a local agency that does not itself approve the development project*, to the applicant in connection with *the development project or as a condition of approval* of a development project for the purpose of defraying all or a portion of the cost of public facilities *or for any other purpose* related to the development project, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies that provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(c) “Local agency” means a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

(d) “Public facilities” includes public improvements, public services, ~~and~~ community amenities, *and measures intended to mitigate or alleviate the effects of the development project, whether or not owned or controlled by a public agency.*

SEC. 2. Section 66001 of the Government Code is amended to read:

66001. (a) In any action establishing, *extending, amending*, increasing, or imposing a fee ~~as a condition of approval of a development project by a local agency~~, the local agency shall do all of the following:

- (1) Identify the purpose of the fee.
- (2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or

1 may be made in other public documents that identify the public
2 facilities for which the fee is charged.

3 (3) Determine how there is a reasonable relationship between
4 the fee's use and the type of development project on which the fee
5 is imposed.

6 (4) Determine how there is a reasonable relationship between
7 the need for the public facility and the type of development project
8 on which the fee is imposed.

9 (b) In any action, *whether ministerial, discretionary,*
10 *adjudicatory, or legislative,* imposing a fee as a condition of
11 approval of a development project by a local agency, *prior to*
12 *imposing the fee,* the local agency shall determine how there is a
13 reasonable relationship between the amount of the fee and the cost
14 of the public facility or portion of the public facility attributable
15 to the development on which the fee is imposed.

16 (c) Upon receipt of a fee subject to this section, the local agency
17 shall deposit, invest, account for, and expend the fees pursuant to
18 Section 66006. *Fees may be simultaneously adopted, imposed, or*
19 *collected to finance more than one of the categories of facilities*
20 *or improvements identified in subdivision (c) of Section 66002,*
21 *provided that each category of facilities or improvements*
22 *separately complies with this section and those fees shall not be*
23 *commingled.*

24 (d) (1) For the fifth fiscal year following the first deposit into
25 the account or fund, and every five years thereafter, the local
26 agency shall make all of the following findings with respect to that
27 portion of the account or fund remaining unexpended, whether
28 committed or uncommitted:

29 (A) Identify the purpose to which the fee is to be put.

30 (B) Demonstrate a reasonable relationship between the fee and
31 the purpose for which it is charged.

32 (C) Identify all sources and amounts of funding anticipated to
33 complete financing in incomplete improvements identified in
34 paragraph (2) of subdivision (a).

35 (D) Designate the approximate dates on which the funding
36 referred to in subparagraph (C) is expected to be deposited into
37 the appropriate account or fund.

38 (2) When findings are required by this subdivision, they shall
39 be made in connection with the public information required by
40 subdivision (b) of Section 66006. The findings required by this

1 subdivision need only be made for moneys in possession of the
2 local agency, and need not be made with respect to letters of credit,
3 bonds, or other instruments taken to secure payment of the fee at
4 a future date. If the findings are not made as required by this
5 subdivision, the local agency shall refund the moneys in the
6 account or fund as provided in subdivision (e).

7 (e) Except as provided in subdivision (f), when sufficient funds
8 have been collected, as determined pursuant to subparagraph (F)
9 of paragraph (1) of subdivision (b) of Section 66006, to complete
10 financing on incomplete public improvements identified in
11 paragraph (2) of subdivision (a), and the public improvements
12 remain incomplete, the local agency shall identify, within 180 days
13 of the determination that sufficient funds have been collected, an
14 approximate date by which the construction of the public
15 improvement will be commenced, or shall refund to the then
16 current record owner or owners of the lots or units, as identified
17 on the last equalized assessment roll, of the development project
18 or projects on a prorated basis, the unexpended portion of the fee,
19 and any interest accrued thereon. By means consistent with the
20 intent of this section, a local agency may refund the unexpended
21 revenues by direct payment, by providing a temporary suspension
22 of fees, or by any other reasonable means. The determination by
23 the governing body of the local agency of the means by which
24 those revenues are to be refunded is a legislative act.

25 (f) If the administrative costs of refunding unexpended revenues
26 pursuant to subdivision (e) exceed the amount to be refunded, the
27 local agency, after a public hearing, notice of which has been
28 published pursuant to Section 6061 and posted in three prominent
29 places within the area of the development project, may determine
30 that the revenues shall be allocated for some other purpose for
31 which fees are collected subject to this chapter and which serves
32 the project on which the fee was originally imposed.

33 (g) A fee shall not include the costs attributable to existing
34 deficiencies in public facilities, but may include the costs
35 attributable to the increased demand for public facilities reasonably
36 related to the development project in order to (1) refurbish existing
37 facilities to maintain the existing level of service or (2) achieve an
38 adopted level of service that is consistent with the general plan.

39 (h) *Any person or entity that is or may be subject to payment of*
40 *a fee in the future, including an organization representing those*

1 *people or entities, may request revisions or updates to fees adopted*
2 *pursuant to this section. If a request is made, a local agency shall*
3 *revise or update the fees in writing and provide substantial*
4 *evidence in the record demonstrating that the new fees comply*
5 *with subdivisions (a) and (b). The fees shall not be required to be*
6 *updated more frequently than every 12 months. Any costs incurred*
7 *by a local agency to revise or update the fee may be recovered as*
8 *part of the fees.*

9 SEC. 3. Section 66002 of the Government Code is amended
10 to read:

11 66002. (a) Any local agency ~~which~~ *that* levies a fee subject
12 to Section 66001 ~~may first~~ *shall* adopt a capital improvement plan,
13 which shall *identify the purpose or function of any public facilities*
14 *for any fees that are to be imposed. The capital improvement plan*
15 *also shall* indicate the approximate location, size, time of
16 availability, and estimates of cost for all facilities or improvements
17 to be financed with the fees.

18 (b) The capital improvement plan shall be adopted by, and shall
19 be annually updated by, a resolution of the governing body of the
20 local agency adopted at a noticed public hearing. Notice of the
21 hearing shall be given pursuant to Section 65090. In addition,
22 mailed notice shall be given to any city or county ~~which~~ *that* may
23 be significantly affected by the capital improvement plan. This
24 notice shall be given no later than the date the local agency notices
25 the public hearing pursuant to Section 65090. The information in
26 the notice shall be not less than the information contained in the
27 notice of public hearing and shall be given by first-class mail or
28 personal delivery.

29 (c) "Facility" or "improvement," as used in this section, means
30 any of the following:

31 (1) Public buildings, including schools and related facilities;
32 provided that school facilities shall not be included if Senate Bill
33 97 of the 1987–88 Regular Session is enacted and becomes
34 effective on or before January 1, 1988.

35 (2) Facilities for the storage, treatment, and distribution of
36 nonagricultural water.

37 (3) Facilities for the collection, treatment, reclamation, and
38 disposal of sewage.

39 (4) Facilities for the collection and disposal of storm waters and
40 for flood control purposes.

1 (5) Facilities for the generation of electricity and the distribution
2 of gas and electricity.

3 (6) Transportation and transit facilities, including but not limited
4 to streets and supporting improvements, roads, overpasses, bridges,
5 harbors, ports, airports, and related facilities.

6 (7) Parks and recreation facilities.

7 (8) Any other capital project identified in the capital facilities
8 plan adopted pursuant to Section 66002.

9 *(d) The fees charged pursuant to Section 66001 may include*
10 *the costs reasonably necessary to prepare and revise the capital*
11 *improvement plan.*

12 SEC. 4. Section 66006 of the Government Code is amended
13 to read:

14 66006. (a) If a local agency requires the payment of a fee
15 specified in subdivision (c) in connection with the approval of a
16 development project, the local agency receiving the fee shall
17 deposit it with the other fees for the improvement in a separate
18 capital facilities account or fund in a manner to avoid any
19 commingling of the fees with other revenues and funds of the local
20 agency, except for temporary investments, and expend those fees
21 solely for the purpose for which the fee was collected. Any interest
22 income earned by moneys in the capital facilities account or fund
23 shall also be deposited in that account or fund and shall be
24 expended only for the purpose for which the fee was originally
25 collected.

26 (b) (1) For each separate account or fund established pursuant
27 to subdivision (a), the local agency shall, within 180 days after the
28 last day of each fiscal year, make available to the public the
29 following information for the fiscal year:

30 (A) A brief description of the type of fee in the account or fund.

31 (B) The amount of the fee.

32 (C) The beginning and ending balance of the account or fund.

33 (D) The amount of the fees collected and the interest earned.

34 (E) An identification of each public improvement on which fees
35 were expended and the amount of the expenditures on each
36 improvement, including the total percentage of the cost of the
37 public improvement that was funded with fees.

38 (F) An identification of an approximate date by which the
39 construction of the public improvement will commence if the local
40 agency determines that sufficient funds have been collected to

1 complete financing on an incomplete public improvement, as
2 identified in paragraph (2) of subdivision (a) of Section 66001,
3 and the public improvement remains incomplete.

4 (G) A description of each interfund transfer or loan made from
5 the account or fund, including the public improvement on which
6 the transferred or loaned fees will be expended, and, in the case
7 of an interfund loan, the date on which the loan will be repaid, and
8 the rate of interest that the account or fund will receive on the loan.

9 (H) The amount of refunds made pursuant to subdivision (e) of
10 Section 66001 and any allocations pursuant to subdivision (f) of
11 Section 66001.

12 (2) The local agency shall review the information made available
13 to the public pursuant to paragraph (1) at the next regularly
14 scheduled public meeting not less than 15 days after this
15 information is made available to the public, as required by this
16 subdivision. Notice of the time and place of the meeting, including
17 the address where this information may be reviewed, shall be
18 mailed, at least 15 days prior to the meeting, to any interested party
19 who files a written request with the local agency for mailed notice
20 of the meeting. Any written request for mailed notices shall be
21 valid for one year from the date on which it is filed unless a renewal
22 request is filed. Renewal requests for mailed notices shall be filed
23 on or before April 1 of each year. The legislative body may
24 establish a reasonable annual charge for sending notices based on
25 the estimated cost of providing the service.

26 (c) For purposes of this section, “fee” means any fee imposed
27 to provide for an improvement to be constructed to serve a
28 development project, or which is a fee for public improvements
29 within the meaning of subdivision (b) of Section 66000, and that
30 is imposed by the local agency as a condition of approving the
31 development project.

32 (d) Any person may request an audit of any local agency fee or
33 charge that is subject to Section 66023, including fees or charges
34 of school districts, in accordance with that section.

35 (e) The Legislature finds and declares that untimely or improper
36 allocation of development fees hinders economic growth and is,
37 therefore, a matter of statewide interest and concern. It is, therefore,
38 the intent of the Legislature that this ~~section~~ *chapter* shall supersede
39 all conflicting local laws and shall apply in charter cities.

(f) At the time the local agency imposes a fee for public improvements on *or in connection with* a specific development project, it shall identify the public improvement that the fee will be used to finance. *A party against whom a fee is to be imposed shall have the opportunity for a hearing to appeal the fee. The request shall state the grounds for the appeal. The appeal shall be heard by the legislative body no sooner than 30 days following the request.*

SEC. 5. Section 66016 of the Government Code is amended to read:

66016. (a) Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least ~~14~~ 45 days prior to the *first* meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. At least ~~10~~ 45 days prior to the *first* meeting, the local agency shall make available to the public data indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues. Unless there has been voter approval, as prescribed by Section 66013 or 66014, no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount ~~which~~ *that* exceeds the estimated amount required to provide the service for which the fee or service charge is levied. If, however, the fees or service charges create revenues in excess of actual cost, those revenues shall be used to reduce the fee or service charge creating the excess.

(b) Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(c) Any costs incurred by a local agency in conducting the meeting or meetings required pursuant to subdivision (a) may be recovered from fees charged for the services which were the subject of the meeting.

(d) This section shall apply only to fees and charges as described in Sections 51287, 56383, 65104, 65456, 65584.1, 65863.7, 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code.

(e) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion levying a fee or service charge subject to this section shall be brought pursuant to Section 66022.

SEC. 6. Section 66018 of the Government Code is amended to read:

66018. (a) Prior to adopting an ordinance, resolution, or other legislative enactment adopting a new fee or ~~approving an increase in~~ *extending, amending, or increasing* an existing fee to which this section applies, a local agency shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a. *Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available shall be mailed at least 45 days prior to the first meeting to any interested party who files a written request with the local agency for mailed notice of the meeting on new, extended, amended, or increased fees. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the*

1 *service. At least 45 days prior to the first meeting, the local agency*
2 *shall make available to the public the capital improvement plan*
3 *and nexus study, or similar written report, and all documentation*
4 *relating to the findings required pursuant to Section 66001, as*
5 *well as data indicating the amount of cost, or estimated cost,*
6 *required to provide the public facilities, as defined in Section*
7 *66000, for which the fee is proposed to be enacted, extended,*
8 *amended, or increased and the revenue sources anticipated to fund*
9 *those public facilities, including general fund revenues. The new*
10 *or increased fee shall be effective no sooner than 60 days following*
11 *the final action on the adoption or increase of the fee.*

12 (b) Any costs incurred by a local agency in conducting the
13 hearing required pursuant to subdivision (a) may be recovered as
14 part of the fees ~~which~~ *that* were the subject of the hearing.

15 (c) This section applies only to the adopting or increasing of
16 fees to which a specific statutory notice requirement, other than
17 Section 54954.2, does not apply.

18 (d) As used in this section, “fees” do not include rates or charges
19 for water, sewer, or electrical service.

20 SEC. 7. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 a local agency or school district has the authority to levy service
23 charges, fees, or assessments sufficient to pay for the program or
24 level of service mandated by this act, within the meaning of Section
25 17556 of the Government Code.